IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 54 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT TOLL ROAD INVESTMENT COMPANY LIMITED

Versus

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Appearance:

1. COMPANY PETITION No. 54 of 2005

MR MIHIR THAKORE, SENIOR ADVOCATE WITH

MR SANDEEP SINGHI FOR SINGHI & CO for Petitioner No. 1

MR JITENDRA MALKAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 11/05/2005

ORAL JUDGEMENT

The present Company Petition is filed for sanctioning the arrangement embodied in the Scheme of

Amalgamation of Vadodara Halol Toll Road Company Limited and Ahmedabad Mehsana toll Road Company Limited (Transferor Companies) with Gujarat Toll Road Investment Company Limited (Transferee Company), whereby the Undertakings (as defined in the Scheme) of the Transferor Companies shall transfer and vest in the Transferee Company on the terms and conditions as stated in the Scheme of Amalgamation. I have heard Mr. Mihir Thakore, Senior Advocate with Mr. Sandeep Singhi, advocate appearing for the petitioner. I have considered the contents of the petition and the totality reflected from the annexures annexed with the petition.

2. Earlier, by order dated 29.12.2004 in Company Application No. 456 of 2004 preferred by the petitioner Company i.e. the Transferee Company for sanctioning the Scheme of Amalgamation, this Court directed to hold and convene the meeting of the Unsecured Creditors for the purpose of considering, and if thought fit, approving, with or without modifications, the said Scheme of Amalgamation. This Court in the said order dispensed with the meeting of the Equity Shareholders of the petitioner Company, in the light of the fact that the Equity Shareholders of the petitioner Company had given their approval in writing to the Scheme of Amalgamation. This Court, vide order dated 20.01.2005 passed in Company Application No. 17 of 2005 in Company Application No. 456 of 2005, modified the order dated 29.12.2004, permitting the petitioner Company to convene meeting of the Unsecured Creditors on Monday, the 28.02.2005. The Notice of the meeting was sent individually to the Unsecured Creditors of the petitioner Company. The notice of the meeting was also advertised, as directed by the orders dated 29.12.2004 and 20.01.2005, in Indian Express (Ahmedabad Edition) and Divya Bhaskar (Ahmedabad Edition) on 03.02.2005. It is noted that the petitioner Company, in addition to the directions of this Court in orders dated 29.12.2004 and 20.01.2005, published the notice of meeting in English Daily, The Times of India (Ahmedabad Edition) and Gujarati Dailies, Gujarat Samachar (Ahmedabad Edition) and Sandesh (Ahmedabad Edition), on 05.02.2005. Pursuant to the convening of the said meeting, the Scheme of Amalgamation was approved unanimously at the meetings. I have perused the report of the Chairman dated 10.03.2005 to the said effect.

3. By order dated 18.03.2005, the present petition was admitted and notices were issued to the Central Government through Regional Director, Department of Company Affairs. The notices were also ordered to be published in two newspapers. Pursuant to the same, an

affidavit of one Mr. Naresh Parbat Sasanwar, Authorised Signatory of the petitioner Company, dated 04.05.2005 has been filed confirming the publication of the notice in two newspapers as directed and service of notice to the Regional Director.

4. The Regional Director vide his letter dated 29.04.2005 addressed to the Registrar of Companies has raised the objection to the effect that the present authorised Capital of the Transferee Company is not adequate to fulfil the requirement to allot the shares as per the scheme and therefore the transferee Company has to increase its Authorised Capital u/s. 94/97/31 of the Companies Act, 1956 and file Form No. 5/23 with Registrar of Companies, Gujarat with necessary registration fees in addition to payment of stamp duty on Form No. 5 as required.

5. Mr. Mihir Thakore, learned Senior counsel appearing for the petitioner Company has submitted that in the Scheme itself, the petitioners have made the provision. He has invited my attention to para 18 of the Scheme wherein it is stated that upon coming into effect of this Scheme, Clause V of the Memorandum of Association of the Transferee Company, shall, without any further act, instrument or deed be and stand altered, modified and amended pursuant to Sections 94 and 394 and other applicable provisions of the Act in the manner set forth in Schedule I hereto. Schedule I relates to amendment to the Memorandum of Association and it is stated that Clause V of the Memorandum of Association of the Transferee Company shall stand modified and amended by deleting the Clause and replacing it with the following:- "The Authorised Share Capital of the Company is Rs.145,00,00,000/- (Rupees One Hundred Fourty Five Crores Only) divided into 10,00,00,000 (Ten Crores) Equity Shares and 4,50,00,000 (Four Crores Fifty Lacs) of Cumulative Redeemable Convertible Preference Shares of Rs.10/- each." Mr. Thakore has further submitted that the petitioner Company undertakes to pay the requisite Fees as well as the Stamp Duty on the Scheme being sanctioned by this Court. He has further invited my attention to the decision of this Court in the case of I.C.I.C.I. BANK LTD., In Re., 112 COMPANY CASES 291 wherein also the similar issue was before the Court and the Court has observed that having perused the relevant provisions of the proposed Scheme, it is clear that the Scheme itself contemplates that upon sanction to the Scheme, Clause V of the memorandum of association of the petitioner-Company i.e. the transferee-Company shall, without any further act, instrument or deed, be and stand

altered, modified and amended. With regard to the other objection also, the Court has taken the view that as per the decision of this Court in Rangkala Investments Ltd., In re and Gujarat Organics Ltd., In re [1997] 89 COMPANY CASES 754, the provisions of Sections 391 to 394 of the Companies Act constitute a complete code and are intended to be in the nature of a "single window clearance" and after considering the said decisions and the statutory provisions, the Court has taken the view that not only in Section 391 of the Companies Act, a complete code, but it is intended to be in the nature of a "single window clearance" system to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the Court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness or feasibility has been judged by the Court.

6. In view of the aforesaid decision of this Court and the provisions made in the Scheme, the Court is of the view that since the objection raised by the Regional Director in his communication to the Registrar of Companies is taken care of and hence, the Court does not see any justification in refusing or withholding its sanction to the Scheme.

7. Therefore, in view of the above considerations, I hold that there are no grounds or circumstances to refuse to grant approval. On going through the Scheme, it appears that the requirement of the provisions of Section 391 to 394 of the Companies Act, 1956 are satisfied and there appears to be cogent grounds for accepting the Scheme which is proposed. The Scheme is genuine and bonafide and in the interest of shareholders and Unsecured Creditors of the petitioner Company. I, therefore, accordingly allow this petition and I approve the arrangement embodied in the Scheme of Amalgamation. Reliefs in terms of para 27 (a) in Company Petition No. 54 of 2005 are hereby granted.

8. The fees of learned Asst. Solicitor General is quantified at Rs. 3,500/- to be paid by the petitioner Company.

9. The Company Petition shall stand disposed off accordingly.

[K.A. PUJ, J.]

#Savariya#

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